

37

**IN THE COURT OF BAKHT ZADA, SCJ/JM,**  
**ORAKZAI AT BABER MELA**

CASE NO. : 08/15AA OF 2023

DATE OF INSTITUTION : 06.09.2023

DATE OF DECISION: 24.04.2024

STATE THROUGH: Rooh-ul-Ameen, ASI, Police Check Post:  
Baland Khel, PS Ghiljo, District Upper Orakzai  
------(Complainant)

VS

Dilfaraz s/o Muqadam Jan, R/O Qoum Baland Khel, District Orakzai.  
------(Accused Facing Trial)

**JUDGEMENT**

**24.04.2024**

Accused Dilfaraz s/o Muqadam Jan is facing trial in case  
FIR No. 13, Dated: 11.07.2023, u/s 15AA of PS Ghiljo,  
District Orakzai.

Brief facts of the case as alleged in the FIR are that  
complainant Rooh-ul-Ameen ASI sent a Murasila to PS Ghiljo  
Orakzai for registration of FIR against the accused facing trial  
Dilfaraz, R/O Baland Khel Orakzai wherein he alleged that on  
11.07.2023 at 12:00 PM, he along with constable Zarwali Khan  
and Hafeez Ullah were present on "Naqabandi" near village  
Baland Khel. In the meanwhile, a person was stopped in  
suspicious condition. During his body search, one Kalashnikov  
bearing No. 1975-753649 along with a fixed charged  
containing 05 rounds of 7.62 bore were recovered from under

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**BAKHT ZADA**  
Senior Civil Judge JM  
Orakzai at Baber Mela

the sheet hanging from his right shoulder. He disclosed his name as Dilfaraz s/o Muqadam Jan. The recovered Kalashnikov along with fixed charger containing 05 rounds of 7.62 bore were taken into possession and were sealed into parcel No. 01. Recovery memo was prepared in the presence of marginal witnesses. The accused was arrested and his card of arrest was issued. Murasila was drafted at the spot and was sent to the PS for registration of FIR. Hence, the above-mentioned FIR was registered.

After completion of the investigation, complete challan was submitted by the SHO of PS Ghiljo, Orakzai against the accused facing trial before this court.

The accused was summoned who appeared before the court on 25.09.2023. Provisions of section 241-A Cr.P.C were complied with. Formal charge against the accused was framed on 28.09.2023 to which he pleaded not guilty and claimed trial, where after the prosecution was asked to produce evidence.

The prosecution produced and recorded statements as many as 05 PWs. The gist of statements of prosecution witnesses are as follows;

**PW-01: Zar Wali. Constable, PP Baland Khel** appeared as PW-01. He is the marginal witness to the recovery memo vide which the complainant, ASI Rooh-ul-Ameen took into

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**BAKHT ZADA**  
 Senior & Jt. J. No. 19/2011  
 Orakzai at Baber Mela

possession on Kalashnikov bearing No. 1975-753649 along with fixed charger containing 05 rounds of 7.62 bore. The recovered Kalashnikov was sealed into parcel No. 01 by the ASI, duly signed with the monogram of GJ. The recovery memo is Ex.PW-1/1. He is also the carrier of Murasila, recovery memo and card of arrest to Muharrir of the PS for registration of FIR.

**PW-02: Abdul Malik, OII, PS Ghijo** appeared as PW-02. The accused was handed over by the ASI to him and he produced the accused before Judicial Magistrate for physical custody vide application Ex.PW-2/1 which was turned down and the accused was sent to judicial lock-up. He prepared the site plan Ex.PW-2/2 on the pointation of ASI/complainant. He drafted letter to FSL which is Ex.PW-2/3. He also drafted road certificate which is Ex.PW-2/4. He took the recovered Kalashnikov to FSL and received FSL report which is Ex.PW-2/5. He recorded the statement of PWs u/s. 161 Cr.P.C. After completion of investigation, he handed over the case file to SHO for onward submission of challan.

**PW-03** is the statement of complainant **Rooh-ul-Ameen, ASI, PS Ghiljo**. He along with constable Zar Wali and Hafeez Ullah recovered one Kalashnikov bearing No. 1975-753649 along with a fixed charger containing 05 live rounds of 7.62

  
**BAKHT ZADA**  
Senior Civil Judge JM  
Orakzai, Balochistan

bore from the accused facing trial Dilfaraz s/o Muqadam Jan. The same were taken into possession and were sealed into parcel No. 01 Ex.P-1 duly stamped with monogram of GJ. He prepared the recovery memo Ex.PW-3/1 in the presence of marginal witnesses. He arrested the accused and issued his card of arrest Ex.PW-3/2. He prepared the Murasila Ex.PW-3/3. He sent the Murasila, recovery memo and card of arrest through constable Zar Wali Khan No. 208 for onward submission to the Muharrir of the PS for registration of FIR. The IO prepared site plan at his pointation and he handed over the parcel No. 01 along with documents and the accused to the IO on the spot. His statement u/s 161 Cr.P.C was recorded by the IO.

**PW-04** is the statement of **Naseem Khan** the then **SHO of PS Ghiljo** presently posted as **SI, CP Samana**. He stated that on completion of investigation, he submitted complete challan against the accused which is Ex.PW-4/1 and correctly bears his signatures.

**PW-05** is the statement of **Haq Nawaz, AMHC, PS Ghiljo**. He stated that he incorporated the contents of Murasila into FIR No. 13, Dated: 11.07.2023, u/s 15AA, of PS Ghiljo, District Orakzai which is in his handwriting and is Ex.PW-5/1. That he received parcel No. 01 from complainant Rooh-ul-Ameen, ASI of PP Baland Khel and he deposited the same in

*Case 2*  
**BAKHT ZADA**  
 Senior Civil Judge/JM  
 Orakzai District

malkhana of the PS. He handed over the case property to Abdul Malik, OII.

Statements of all the above PWs were thoroughly cross-examined by the learned counsel for the accused facing trial.

Learned Sr.PP for the state abandoned the PW namely Hafeez Ullah being witness of the same fact as deposed by PW-01, Zar Wali Khan and closed the prosecution evidence on 13.03.2024.

Statement of the accused u/s 342 Cr.P.C was recorded on 21.03.2024. He neither wished to produce any evidence in defence nor wished to be examine on oath.

Arguments of the learned Sr.PP for the state and counsel for the accused facing trial heard and available record perused.

The allegations against the accused facing trial are that the complainant along with constable Zar Wali, Belt No. 2060, Hafeez Ullah, 2001 were present on naqabandi. In the meanwhile, a person who was coming from Garhi Masti Khel on feet. He was stopped in suspicious condition and upon body search one Kalashnikov bearing No. 1975-753649 along with fixed charger containing 05 rounds of 7.62 bore, hanging from his right shoulder under the sheet, was recovered from his possession, for which he did not produce any valid

*9/2/24*  
**BAKHIT ZADA**  
Sardar Civil Judge/JM  
Orakzai at Baber Mela

42

license/permit and the said Kalashnikov was taken into possession and sealed in parcel No. 01.

Zarwali Khan appeared as PW-01 who stated that Baland Khel Police Post is situated about 80 kms from PS Ghiljo and that he left from the place of occurrence to the PS at 12:30 hrs and reached there at 15:30 hrs. He further stated that he reached back to the place of occurrence to the PS at 07:00 PM. He also stated that when he left from the place of occurrence to the PS, his other companions/police officials also left for the PP at the same time, but PW-02, OII Abdul Malik stated in his cross-examination that he received the copy of Murasila on 15:35 hrs and left from the PS at 15:40 hrs and reached the place of occurrence in 01 hour and 40 minutes i.e at 17:20 hrs which is in contradiction to the time shown by PW-01 who stated that he reached back to the place of occurrence at 19:00 hrs. PW-02 in his cross-examination has stated that he when he reached to the place of occurrence, accused facing trial, complainant Rooh-ul-Ameen and other police contingent were already present there, but PW-01 has categorically stated in his cross-examination that when he left for PS, the complainant along with other police officials and accused also left for the Police Post Baland Khel from the place of occurrence. In the present scenario either the statement of PW- 01 Zarwali Khan

BAKHT ZADA  
Senior Civil Judge  
Orakzair Baber Mela  
24.9.24

is not based on truth or the statement of IO is wrong as both are in contradiction to each other. PW-01 has stated that he went to the PS on motorcycle but there is no mention in the report and statements of PW recorded u/s 161 Cr.P.C that Zarwali Khan went to the PS on motorcycle, furthermore it has not been explained that from whom the said motorcycle was borrowed. When the complainant was not present at the spot as stated by PW-01 then at whose pointation the IO has prepared the site plan. PW-03 complainant stated in his cross-examination that IO reached to the place of occurrence at 03:30 PM while PW-01 has categorically stated that he reached to the PS at 03:30 PM for handing over the Murasila to the Muharrir. Similarly, PW-02, IO also contradicted the statement of complainant and has stated that he received the FIR at 03:35 PM in the PS. All the statements of PWs are contradictory to each other. At the time of cross-examination of the complainant, the case property i.e the Kalashnikov in question was unsealed at the request of the counsel for the accused and it was found that an empty shell along with 05 live rounds were present in the magazine and the magazine was rusted and was not in workable condition. The complainant and IO have not mentioned about the empty shell during their report and investigation. Furthermore, during examination, it was found

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 Senior Counsel  
 Orakzai at Baber Mela

(44)

that there is no sling in the Kalashnikov, then how it is possible that the same was handing from his right shoulder of the accused. So, the statements of PWs as well as the reports of the complainant and IO are full of contradiction and are creating doubts about the mode and manner of the recovery in the instant case, therefore, I hereby acquit the accused facing trial by extending benefit of doubt. He is on bail. His sureties are discharged from the liability of his bail bonds, Case property be confiscated to the state.

Case file be consigned to the record room after its completion and compilation.

**Announced**  
24.04.2024

*Bakht Zada*  
24.4.24  
(Bakht Zada)  
SCJ/JM,  
Orakzai (at Baber Mela)

**CERTIFICATE**

Certified that this order consists of fourteen (14) pages. Each page has been read, corrected where-ever necessary and signed by me.

**Dated: 24.04.2024**

*Bakht Zada*  
24.4.24  
(Bakht Zada)  
SCJ/JM,  
Orakzai (at Baber Mela)